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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/567,359

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Henry William Lupton

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EXAMINER

DANEGA, RENEE A

ART UNIT

PAPER NUMBER

3736

MAIL DATE

DELIVERY MODE

08/11/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/567,359	Applicant(s) LUPTON, HENRY WILLIAM	
	Examiner RENEE DANEGA	Art Unit 3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 52-71 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 52-71 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2/6/06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Double Patenting

1. Claim 68 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 67. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 52-62, 64, 66, and 69-71 are rejected under 35 U.S.C. 102(b) as being anticipated by Wilson et al. (US 6030349).

- Regarding claim 52, Wilson teaches an elongated guide wire for use in a surgical or other procedure for accessing a remote site in the body of a human or animal subject, the guide wire defining a longitudinally extending central axis, and extending between a distal end for accessing the remote site and a spaced apart proximal end, a curvature controllable portion (10) being located in the guide wire towards the distal end thereof for offsetting the distal end (12) at an angle relative to the central axis, the curvature controllable portion comprising an elongated curvature inducing first member (10), and an elongated curvature inducing second member (12) coupled to each other adjacent their distal ends, and extending from their distal ends axially in a proximal direction, and being moveable axially relative to each other for inducing a curved bend in the curvature controllable portion, wherein a means (20) is provided for constraining the first and second

members to move parallel to each other for inducing the curved bend in the curvature controllable portion. (Figures 1, 2, 4).

- Regarding claim 53, Wilson teaches the first and second members side by side and able to slidably move axially to each other (abstract) (Figure 1).
- Regarding claim 54, Wilson teaches the means for constraining first and second members comprises a guide tongue extending laterally from the second member (12) and being slideably engaged with an axially extending corresponding groove (34) (Figures 1, 2).
- Regarding claim 55, Wilson teaches a retaining means (20) for retaining the guide tongue laterally captive (Figure 4).
- Regarding claim 56, Wilson teaches the guide wire in which the retaining means is provided by the transverse cross section of the guide tongue (12) cooperating with the transverse cross section of the guide groove (34) (Figures 1, 4).
- Regarding claim 57, Wilson teaches the guide wire to comprise an elongate tubular member extending from proximate end to distal and the first member formed by the tubular member (10) (Figure 1).
- Regarding claim 58, Wilson teaches an operating means (20) able to be provided at proximal end of the guide wire for moving one of the first and second member relative to the other for inducing the curved bend and a connecting means (34) provided for connecting the operating means to the second member (abstract, Figures 1, 2).
- Regarding claim 59, Wilson teaches the connecting means to be a bore defined by the tubular member forming the guide wire (34) (Figure 2).
- Regarding claim 60, Wilson teaches the connecting means cooperating with the tubular member forming the guide wire so that the column strength of the connecting means (34) is sufficient for facilitating urging the second member relative to the first in both axial directions (Figure 2).
- Regarding claim 61, Wilson teaches the connecting means comprising an elongated (32) connecting wire and the operating means (20) formed by a portion of the connecting wire extending from the tubular member forming the guide wire at the proximal end thereof for facilitating urging the guide wire in at least one axial direction for urging the second member in the corresponding direction (Figure 1, 2)
- Regarding claim 62, Wilson teaches the guide wire in which at least one of the first and second member s is of resilient material for resiliently urging the distal

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end of the guide wire into axial alignment with the central axis (column 6, lines 2-5).

- Regarding claim 64, Wilson teaches a sleeve may cover the guide wire (column 3, lines 40-43).
- Regarding claim 66, Wilson teaches the device for use in accessing a remote site in the body of a human or animal (column 1, line 43-50).
- Regarding claim 69, this claim states the steps of the method providing the components of apparatus of claim 1, thus the same rationale of rejection is applicable
- Regarding claim 70, Wilson teaches the first and second members side by side and able to slidably move axially to each other (abstract) (Figure 1).
- Regarding claim 71, Wilson teaches the means for constraining first and second members comprises a guide tongue extending laterally from the second member (12) and being slideably engaged with an axially extending corresponding groove (34) (Figures 1, 2).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 63 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wilson as applied to claim 52 above, and further in view of Gardeski (US 7101361).

- Regarding claim 63, Wilson doesn't teach a bulbous tip. However, Gardeski teaches a guide wire terminating in a bulbous tip (23) (Figure 1). It would have been obvious in view of Gardeski to provide a bulbous tip on Wilson's guide wire to prevent trauma to the body while accessing with the guide wire.

5. Claims 65, 67, and 68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilson as applied to claim 52 above, and further in view of Pacetti (US 20030120148).

- Regarding claim 65, Wilson doesn't teach a portion of the distal guide wire to be radiopaque material. However, Pacetti teaches a guide wire with made of radiopaque material [0040] in order to allow observation by MRI. It would have been obvious in view of Pacetti to provide Wilson's distal end to be made of radiopaque material in order to utilize MRI to direct the device.
- Regarding claims 67-68, Wilson doesn't teach the guide wire in combination with a catheter. However, Pacetti teaches the guide wire to be used in combination with a catheter [0001]. It would have been obvious in view of Pacetti to use the guide wire in combination with a catheter in order to perform an angioplasty.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RENEE DANEGA whose telephone number is (571)270-3639. The examiner can normally be reached on Monday through Thursday 7:30-5:00 eastern time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571) 272-4726. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

RAD

/Max Hindenburg/
Supervisory Patent Examiner, Art Unit 3736